(3)

Supreme Court, U.S.
FILED
NOV 30 1999
CLERK

No. 99-769

IN THE

Supreme Court of the United States

TIMOTHY M. WHITE,

Petitioner,

v.

SMI OF PATTISON AVENUE, L.P.,
SPECTAGUARD, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT SPECTAGUARD, INC.

DEBORAH M. KNIGHT
Counsel of Record
CHARLES D. COOPER, II
GOLDFEIN & JOSEPH
1600 Market Street
33rd Floor
Philadelphia, PA 19103-7288
(215) 979-8200

Attorneys for Respondent SpectaGuard, Inc.

PACKARD PRESS® / APPELLATE DIVISION, 1617 JFK BOULEVARD, PHILA., PA. 19103 (215) 563-9000

1788

QUESTION PRESENTED

Did the United States Court of Appeals for the Third Circuit properly apply well-settled law when it affirmed the district court's discretionary decision to bifurcate the trial where the district court did not routinely bifurcate cases and where the district court's decision was based on Rule 42(b) factors?

CORPORATE DISCLOSURE STATEMENT

SpectaGuard, Inc. is not owned by any parent corporation. No publicly held corporation owns more than 10% of SpectaGuard, Inc.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

1. Nature Of The Case 1
2. Pretrial And Trial Proceedings 1
3. Post-Trial Proceedings 3
4. Mr. White's Appeal To The Third Circuit Court Of Appeals 3

REASONS FOR DENYING THE WRIT 5

1. There Are No Compelling Reasons To Grant Mr. White's Petition 5
2. Bifurcation Is A Matter Of Judicial Discretion 7
3. Bifurcation Of This Trial Was Justified 7
4. Mr. White Was Not Prejudiced By The Bifurcation Of This Matter 9
5. The District Court Exercised Its Informed Discretion In Bifurcating This Case: It Had No Policy Of Routinely Bifurcating Cases 10
6. The Bifurcation Of Mr. White's Case Represents The Proper Application Of Well-Settled Law 11

CONCLUSION 12

TABLE OF AUTHORITIES

Cases ***Page***

Angelo v. Armstrong World Industries, 11 F.3d 957 (10th Cir.) 5

Barr Laboratories, Inc. v. Abbott Laboratories, 978 F.2d 98 (3d Cir. 1992) 7, 11

Beeck v. Aquaslide 'N' Dive Corp., 562 F.2d 537 (8th Cir. 1977) 5

Corrigan v. Methodist Hospital, 160 F.R.D. 55 (E.D. Pa. 1995) 7

Davis & Cox v. Summa Corp., 751 F.2d 1507 (9th Cir. 1985) 5

Davis v. Freels, 583 F.2d 337, 343 (7th Cir. 1978) 5

DeAnda v. City of Long Beach, 7 F.3d 1418 (9th Cir. 1993) 7

Franklin Music Co. v. American Broadcasting Companies, Inc., 616 F.2d 528 (3d Cir. 1979) 5, 7, 9

Gonzalez-Martin v. Equitable Life Assurance, 845 F.2d 1140 (1st Cir. 1988) 5

Hahn v. Woodlyn Fire Co., 32 F.R.D. 429, 431 (E.D.Pa. 1963) 8

In re Master Key Antitrust Litigation, 528 F.2d 5, 14 (2nd Cir. 1975) 5

In Re Paoli R.R. Yard PCB Litigation, 113 F.3d 444, 453, n.5 (3d Cir. 1997) 8, 11-12

Itel Capital Corp. v. Cups Coal Co., 707 F.2d 1253 (11th Cir. 1983) 5

Lieberman-Sack v. Hartford Community Health Plan of New England, 882 F.Supp. 249 (D.R.I. 1995) 7, 11

Lis v. Robert Packer Hospital, 579 F.2d 819 (3rd Cir. 1978), *cert. denied,* 439 U.S. 955 (1978) 4, 6, 10, 11

Cases, continued ***Page***

Miller v. New Jersey Transit, 160 F.R.D. 37 (D.N.J. 1995) 7

Moss v. Associated Transport, Inc., 33 F.R.D. 335 (E.D.Tenn. 1963), aff'd, 344 F.2d 23 (6th Cir. 1965) 7

Reines Distributors, Inc. v. Admirable Corp., 257 F.Supp. 619 (S.D.N.Y. 1965) 8

Rossano v. Blue Plate Foods, Inc., 314 F.2d 174, 176 (5th Cir.) *cert. denied,* 375 U.S. 866 (1963) 5, 8, 12

Saxon v. Titan-C Manufacturing, 86 F.3d 553 (6th Cir. 1996) 5, 7

United States v. King, 582 F.2d 888 (4th Cir. 1982) 5

Zofcin v. Dean, 144 F.R.D. 203 (S.D.N.Y. 1992) 7

COURT RULES

Fed.R.Civ.P.42(b) ..... i, 4, 5, 6, 7, 11, 12

Rule 10(a) of the Rules of The Supreme Court Of The United States 6

Rule 10(c) of the Rules of The Supreme Court Of The United States 6

STATEMENT OF THE CASE

1. Nature Of The Case

On April 6, 1990, Mr. White, who had a history of having previously broken his neck, was attending a Mötley Crüe concert at the Spectrum Arena in Philadelphia. Before entering the Arena, Mr. White had consumed alcohol and drugs. When the band began to play, the crowd on the floor of the arena rushed forward; Mr. White himself rushed to the very front, to the barricade separating the crowd from the stage.

On two or three occasions, Mr. White climbed onto the barricade separating the crowd from the performers. Though Mr. White was told to get off the barricade by security, he repeatedly climbed onto it. Mr. White eventually punched a security guard, Ed Collins, in the mouth. In the scramble that ensued, in the attempt to eject Mr. White, Mr. White either fell or was pulled over the barricade, struck the floor and allegedly broke his neck. Security guards testified that, in the melee, Mr. White fell from the barricade. Mr. White testified that he was injured as a result of being pulled backwards over the barricade and thrown to the floor. Mr. White also testified that two or three unidentified guards tried to move him after he had sustained the neck injury. One of Mr. White's fact witnesses, Steve Johannsmeier, testified that after Mr. White's neck was injured, Mr. White was dragged away.

2. Pretrial And Trial Proceedings

On March 24, 1992, Mr. White filed a Complaint in the United States District Court for the Eastern District of Pennsylvania. On June 1, 1992, the district court held a pretrial conference. At the conference, the district court addressed the issue of bifurcation of the trial. Mr. White's current counsel, who was trial counsel, was not counsel of record at the June 1, 1992 pretrial conference, nor was he present. The district court issued a Pretrial Report and Order. (App. 19a). The district court made a handwritten note which was then transcribed into the typewritten order. (App. 18a).

On December 9, 1997, the district court confirmed that trial would be bifurcated to which Mr. White objected. On February 13, 1998, i.e., two weeks before trial, Mr. White filed a motion for reconsideration of the district court's decision to order bifurcation. In his motion, Mr. White argued that the jury was entitled to know of "the great discomfort and inconvenience . . . associated with rehabilitating a broken neck..." while considering liability. He also alleged prejudice relating to the causation opinion rendered by his treating orthopedist, Dr. Ronald M. Greene. Mr. White had videotaped Dr. Greene's trial testimony. In his testimony, Dr. Greene rendered an opinion regarding the mechanics of Mr. White's accident. Mr. White, though, acknowledged that he could play Dr. Greene's causation opinion at the liability phase, while reserving the remainder for the damages phase, when he argued:

> [I]t would be duplicative to play a part of Dr. Greene's testimony on this issue at the liability phase and to replay it as part of playing the testimony in its entirety at the damages phase.

(*See* App. 8a). Both defendants SpectaGuard, Inc. ("SpectaGuard") and SMI of Pattison Avenue, L.P. ("SMI") opposed Mr. White's motion for reconsideration. On February 18, 1998, the district court denied Mr. White's motion for reconsideration. (App. 21a).

The liability phase of trial was conducted from March 2 through 5, 1998. Mr. White never sought to play the portion of Dr. Greene's videotaped deposition which included Dr. Greene's causation opinion. Mr. White never made an offer of proof and the district court never precluded Mr. White from presenting Dr. Greene's causation opinion. Contrary to footnote 1 on page 5 of Mr. White's Petition, Mr. White simply chose not to present Dr. Greene's videotaped opinion testimony at the liability trial. At the conclusion of the liability phase, the jury found in favor of SpectaGuard and SMI and against Mr. White, thereby obviating the need for the damages phase of trial. The jury found SpectaGuard and SMI had been negligent, but that the negligence was not a substantial contributing factor to the incident. The jury also found that no

security guard had committed an intentional act. The district court entered judgment on the jury's verdict.

3. Post-Trial Proceedings

Following the trial and verdict, Mr. White's counsel's paralegal reportedly undertook an unscientific, outside-the-record survey of the bifurcation decisions of the district court. This survey purportedly covered the district court's cases listed over the course of fifteen months in the local legal newspaper, *The Legal Intelligencer.* Based on this survey, Mr. White's counsel concluded that the district court routinely bifurcates trials. However, Mr. White, through his counsel, never adduced the background circumstances of the surveyed cases. His survey did not demonstrate that the district court routinely bifurcated all cases or even all cases of a particular type. Rather, the survey demonstrated only that the district court bifurcated cases of various types, for reasons beyond the scope of the survey.

Mr. White filed a motion for new trial on March 6, 1998 and an amended motion for new trial on March 13, 1998. SpectaGuard and SMI opposed Mr. White's post-trial motions. After briefing by the parties, on August 11, 1998, the district court filed its Memorandum Opinion and Order, denying Mr. White's motion for new trial. The court's opinion exhaustively explicated its reasons for exercising its discretion in bifurcating the trial of this matter. (App. 22a-31a).

4. Mr. White's Appeal To The Third Circuit Court Of Appeals

On August 28, 1998, Mr. White filed a Notice of Appeal. The issue of bifurcation was fully briefed and considered by the Court of Appeals for the Third Circuit. On appeal, SpectaGuard noted that the standard of review required finding an abuse of discretion at the trial level before ordering a new trial. SpectaGuard also noted that the Third Circuit consistently required a showing of prejudice before ordering a new, non-bifurcated trial. SpectaGuard asserted that Mr. White was not prejudiced and had not preserved the issue of his asserted prejudice—Mr. White never made an offer of

proof as to treating orthopedist Dr. Greene's causation opinion and the Court never precluded Mr. White from presenting Dr. Greene's causation opinion. SpectaGuard argued that the district court's decision to bifurcate was based on the factors outlined in Fed. R. Civ. P. 42(b). Finally, SpectaGuard asserted that this case was distinguishable from the 1978 case upon which Mr. White so heavily relied, *Lis v. Robert Packer Hospital,* 579 F.2d 819 (3rd Cir. 1978), *cert. denied,* 439 U.S. 955 (1978), in which the Third Circuit criticized a district court's policy of bifurcating all negligence trials although the Third Circuit did *not* order a new trial in *Lis*.

In the present case, the Third Circuit affirmed the district court's denial of Mr. White's motion for new trial. The Third Circuit noted that the standard of review was abuse of discretion. (App. 4a). It held that the district court properly exercised informed discretion and considered the bifurcation issue at least three times prior to trial. (App. 5a-7a). The Third Circuit found that the district court had *no* routine practice of bifurcating all trials of a particular variety. (App. 6a). Finally, the Third Circuit held that Mr. White failed to meet his burden of demonstrating prejudice from the district court's bifurcation decision. (App. 7a-8a).

REASONS FOR DENYING THE WRIT

Mr. White fails to provide any compelling reasons for this Court to grant the writ of certiorari. The Third Circuit's decision properly applied well-settled law regarding bifurcation of trials.

1. There Are No Compelling Reasons To Grant Mr. White's Petition

Mr. White's Petition For Writ Of Certiorari ("Petition") should be denied; it presents no compelling reasons why this Court needs to address the Third Circuit's affirmance of an informed, discretionary decision made by the district court to bifurcate this matter.

There is no dispute as to the rule of law applied. Rule 42(b) permits bifurcation of trials, "in furtherance of convenience or to avoid prejudice, or when . . . conducive to expedition and economy . . . ." District courts have broad discretion to bifurcate and may only be reversed for abusing that discretion. The United States Courts of Appeals uniformly affirm the district courts' discretion in deciding whether to bifurcate trials. *See, e.g., Gonzalez-Martin v. Equitable Life Assurance.*, 845 F.2d 1140 (1st Cir. 1988); *In re Master Key Antitrust Litigation*, 528 F.2d 5, 14 (2nd Cir. 1975); *Franklin Music Co. v. American Broadcasting Companies, Inc.*, 616 F.2d 528 (3d Cir. 1979); *United States v. King*, 582 F.2d 888 (4th Cir. 1982); *Rossano v. Blue Plate Foods, Inc.*, 314 F.2d 174, 176 (5th Cir.), *cert. denied*, 375 U.S. 866 (1963); *Saxon v. Titan-C Manufacturing*, 86 F.3d 553 (6th Cir. 1996); *Davis v. Freels*, 583 F.2d 337, 343 (7th Cir. 1978); *Beeck v. Aquaslide 'N' Dive Corp.*, 562 F.2d 537 (8th Cir. 1977); *Davis & Cox v. Summa Corp.*, 751 F.2d 1507 (9th Cir. 1985); *Angelo v. Armstrong World Industries.*, 11 F.3d 957 (10th Cir. 1993); *Itel Capital Corp. v. Cups Coal Co.*, 707 F.2d 1253 (11th Cir. 1983).

The Third Circuit's decision in this matter does not conflict with the decisions of other circuits. In this matter, the Third Circuit reviewed the district court's bifurcation decision and found no abuse of discretion. The Third Circuit did not depart from the usual course of judicial proceedings, nor did

it sanction any gross deviation by the district court. The Third Circuit found that the district court evaluated the Rule 42(b) factors and that its decision "was the product of an informed exercise of discretion." (App. 7a). Recognizing the correctness of the district court's approach and the appropriateness of its exercised discretion, the Third Circuit affirmed the district court. Accordingly, Mr. White's Petition asserts as error what essentially is no more than an alleged misapplication of a properly stated and well-settled rule of law. Hence, Mr. White's Petition does not invoke the considerations governing review on certiorari set forth in Rule 10(a) of the Rules of The Supreme Court of The United States.

Mr. White's Petition tries to invoke, but ultimately eludes, the considerations governing review on certiorari set forth in Rule 10(c) of The Rules of The Supreme Court of The United States. In this matter, the Third Circuit did not decide any important question of federal law which should be addressed by this Court. Mr. White has attempted to elevate the significance of his case by asserting (incorrectly) that the trial court in this matter had a policy of routine bifurcation, a policy which was criticized some 20 years ago in *Lis v. Robert Packer Hospital, supra,* where a district court judge bifurcated every negligence case regardless of the circumstances. While Mr. White's argument lacks foundation – the district court in this matter had no such policy – even in the *Lis* case this Court denied certiorari at 439 U.S. 955 (1978).

Mr. White's Petition attempts to create the specter of an important legal issue at stake but a review of the authorities he cites indicates that the issues relating to bifurcation of trials were addressed decades ago. All five of the Circuit Court cases relating to bifurcation cited by Mr. White were decided before 1980. Similarly, a majority of the secondary sources cited by Mr. White pre-date 1980. Mr. White's Petition demonstrates there is no reason to grant said Petition. The practical considerations as well as the policies involved in bifurcation of trials were addressed several decades ago. There is no reason to revisit the issues now.

2. Bifurcation Is A Matter Of Judicial Discretion

Bifurcation is a practice which is authorized under Fed.R. Civ.P. 42(b). The court in its discretion may order the bifurcation of a trial in the furtherance of expedition and economy or in the avoidance of prejudice. The court's decision to bifurcate is highly discretionary and is made by balancing the equities of each case. *Corrigan v. Methodist Hospital,* 160 F.R.D. 55 (E.D. Pa. 1995). The court may issue an order bifurcating a case, even on its own motion, within its discretion. *Saxon v. Titan-C Manufacturing,* 86 F.3d 553 (6th Cir. 1996); *Franklin Music, supra* (district court ordered bifurcation over objection of all parties); *Moss v. Associated Transport, Inc.,* 33 F.R.D. 335 (E.D.Tenn. 1963), *aff'd,* 344 F.2d 23 (6th Cir. 1965). The court's decision to bifurcate will only be set aside on appeal for an abuse of discretion. *Franklin Music, supra.; DeAnda v. City of Long Beach,* 7 F.3d 1418 (9th Cir. 1993).

3. Bifurcation Of This Trial Was Justified

Bifurcation is appropriate when it will enhance juror comprehension by temporarily excluding evidence which could cloud the true issues. *Barr Laboratories, Inc. v. Abbott Laboratories,* 978 F.2d 98 (3d Cir. 1992). In this case, plaintiff raised claims of assault and battery and negligent training, alleging defendants SMI and SpectaGuard caused plaintiff's broken neck. In defending against the assault and battery claim, defendants asserted that the security guards involved were privileged to use reasonable force in self-defense, or in the defense of others. Under Pennsylvania law, reasonable force is that level of force which is *not likely* to inflict death or serious bodily harm. Extensive presentation of evidence regarding Mr. White's broken neck could have confused the issue of whether the force employed was likely or unlikely to cause serious bodily injury. When a plaintiff's injuries are severe or prejudicial in some respect, yet unrelated to liability, bifurcation is proper. *See, Lieberman-Sack v. Hartford Community Health Plan of New England,* 882 F.Supp. 249 (D.R.I. 1995); *Miller v. New Jersey Transit,* 160 F.R.D. 37 (D.N.J. 1995); *Zofcin v. Dean,* 144 F.R.D. 203 (S.D.N.Y. 1992).

Bifurcation is also authorized to reduce cost and expense. If the resolution of a particular fact or issue could considerably shorten the trial, the court does not abuse its discretion in ordering bifurcation where the bifurcation preserves judicial resources and expenses. *See In Re Paoli R.R. Yard PCB Litigation*, 113 F.3d 444, 453, n.5 (3d Cir. 1997). *See also Rossano v. Blue Plate Foods, Inc., supra; Reines Distributors, Inc. v. Admirable Corp.*, 257 F.Supp. 619 (S.D.N.Y. 1965). Additionally, where a plaintiff's verdict is far from assured, a separate trial on the liability issues is appropriate. *Hahn v. Woodlyn Fire Co.*, 32 F.R.D. 429, 431 (E.D.Pa. 1963).

In its post-trial Memorandum Opinion and Order, the district court demonstrated its consideration of factors relevant to bifurcation, i.e., theories of claims and defenses, the number of liability witnesses versus the number of damages witnesses, the nature and severity of petitioner's injuries and how petitioner's injuries could affect the jury's consideration of liability. (App. 28a-31a). As noted by the district court, the liability evidence was completely different from the damages evidence for which plaintiff listed as many as seven potential witnesses. Thus, it made sense for the jury to focus its attention on liability first, then consider damages. *Id.*

As to Mr. White's contention that the district court inappropriately bifurcated this matter at a premature stage of the proceedings, the law does not mandate that a decision to bifurcate await the eve of trial of the matter. Additionally, at the early stages of this litigation, and in particular the Pretrial Conference with accompanying Order of June 1, 1992, Mr. White's current counsel was not the attorney of record. He has no personal knowledge regarding what transpired at the Pretrial Conference. Furthermore, as noted by the Third Circuit, the district court could evaluate the case in its embryonic stages and later reconsider the issue which the district court did twice before trial. (App. 6a-7a). Mr. White makes much of the fact that there are two (2) versions of the district court's June 1, 1992 Order - the initial, handwritten one and the typed one - a fact of absolutely no consequence. The district court clearly acknowledges that bifurcation was addressed at the

June 1, 1992 Pretrial Conference. What Mr. White fails to acknowledge is that the district court had ample time and opportunity to consider and reconsider bifurcation before trial. In fact, the record evidences that the district court's attention was repeatedly focused prior to trial upon whether the case should be bifurcated. *Id.*

4. Mr. White Was Not Prejudiced By The Bifurcation Of This Matter

An order to bifurcate is unassailable if it does not result in prejudice to the parties. To be reversible, an order to bifurcate must result in demonstrable prejudice and must be an abuse of judicial discretion. *Franklin Music, supra.* On page 5 of his Petition at footnote 1, Mr. White claims he did not present the testimony of Dr. Greene because his videotaped deposition testimony was part of the "damages" part of the case. Mr. White's assertion is merely a repackaged phrasing of an argument which was rejected by the Third Circuit. In the Third Circuit, Mr. White's counsel argued that the district court's bifurcation left him with "the impression" that he was not permitted to present the videotaped liability testimony of his orthopedic expert, Dr. Greene, to the jury during the liability phase, and that he was prejudiced thereby. His counsel argued that the district court never "volunteered" that he was permitted to present Dr. Greene's causation testimony in the liability phase. Regardless of how Mr. White states the point, the fact remains that the omission of Dr. Greene's testimony was not the result of the decision to bifurcate and Mr. White has failed to establish any prejudice from the bifurcation. In rejecting Mr. White's argument that he was not able to present Dr. Greene's testimony in the liability phase, the Third Circuit noted:

> It is undisputed, however, that the district court's ruling on White's objection to bifurcation did not include a ruling that White could not present any portion of Dr. Greene's testimony which was relevant to the liability issue. Appellant's counsel admits, moreover, that Dr. Greene was not identi-

> fied as a liability witness in his pretrial statement and further that counsel did not seek to submit any part of the videotaped testimony during the liability phase. In his motion for reconsideration of the bifurcation decision, appellant's counsel argued against bifurcation on the ground, *inter alia*, that it would be duplicative to play the relevant portion of Dr. Greene's testimony during both phases of the trial. (A. 78). Thus, the record reflects that the district court had given counsel no reason to believe that he would be precluded from submitting Dr. Greene's testimony during the liability phase of the trial. Having failed to make even a proffer of Dr. Greene's testimony during the liability phase of the trial, White cannot now claim prejudice from its omission solely because the trial was bifurcated.

(App. 7a-8a). Nothing in this matter established that Mr. White was prejudiced by the bifurcation decision.

5. The District Court Exercised Its Informed Discretion In Bifurcating This Case: It Had No Policy Of Routinely Bifurcating Cases

Mr. White complains to this Court, as he did to the Third Circuit, that the district court's decision to bifurcate *this* trial was procedurally flawed. He continues to argue, albeit without foundation, that the district court routinely bifurcates cases. Mr. White continues to complain that the district court did not issue a contemporaneous, written opinion in support of its decision to bifurcate this matter. As noted previously, the district court had no policy of routinely bifurcating cases. Additionally, no rule of law requires a contemporaneous, written opinion for every bifurcation decision by a trial court. More importantly, plaintiff's unfounded complaints do not justify review by this Court.

Mr. White's attempts to analogize this case to the circumstances of *Lis*, *supra* in which the Third Circuit criticized a district court's policy of routinely bifurcating all negligence cases, *Lis*, 579 F.2d at 824, ignore the teachings of *Lis*. The fact

that the district court in *Lis* had a policy of bifurcating *all* negligence cases revealed that that court was not assessing cases individually and exercising its informed discretion. In the instant case, however, there is no evidence that the district court bifurcated all negligence cases or all cases of any particular variety. Rather, Mr. White criticizes the district court for allegedly bifurcating many of its cases of various types, including strict liability, negligence, discrimination, and other civil rights cases. Mr. White's observation, based on his unscientific survey, simply misses the point made by *Lis*. In fact, his outside-the-record survey of the district court's alleged history of bifurcation decisions, presuming it to be true, suggests that the district court's practice is to assess the cases individually and then exercise its discretion in bifurcating some of the cases, exactly what is required by Rule 42.

6. The Bifurcation Of Mr. White's Case Represents The Proper Application Of Well-Settled Law

In support of his petition, Mr. White sets forth an extended policy argument in opposition to bifurcation of trial. He essentially argues that the jury should have heard his entire case, so that it could lend "beneficial flexibility" to the harsh rules of liability and apply its social conscience, common sense and experience to reach a compromise verdict. In short, what Mr. White is arguing is that because he sustained a broken neck, the jury should have been allowed to hear all the evidence regarding the extent of his alleged injuries so that the jury could be persuaded to reach a compromise verdict on liability.

If the historically cited concern of preserving the possibility of compromise verdicts were the only factor to consider, there would be no bifurcation of trials. However, society juggles and balances many competing concerns and policies within the law. As to bifurcation, specifically, the courts are cognizant of enhancing juror comprehension of the liability issues, *Barr Laboratories, supra;* avoiding undue prejudice due to the severity of the alleged injuries, *Lieberman-Sack, supra;* and reducing costs and expenses for the court and litigants, *In*

re Paoli R.R. Yard, supra. In fact, it has been stated that, "[C]onservation of both time and money are the bedrock basis for the rule..." *Rossano, supra,* 314 F.2d, at 176. The various policy concerns, both for and against bifurcation, are built into Rule 42(b) and the interpretations of that Rule by the courts. As a result, bifurcation is a well-settled, authorized practice. The district court complied with Rule 42(b) in bifurcating this case, and the Third Circuit's affirmance of the district court's decision properly applied the well-settled law regarding bifurcation.

CONCLUSION

For the reasons set forth above, Mr. White's Petition For Writ of Certiorari should be denied.

Respectfully submitted,

/s/ DEBORAH M. KNIGHT
DEBORAH M. KNIGHT
CHARLES D. COOPER
GOLDFEIN & JOSEPH
1600 Market Street, 33rd Floor
Philadelphia, PA 19103-7288
(215) 979-8200

Date: November 30, 1999